

(2022) 04 CAL CK 0040
In the Calcutta High Court
Case No : C.R.R. No. 672 Of 2014

Kajal Chandra Bag

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 13-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Code Of Criminal Procedure, 1973 — Section 156(3), 161, 482

Indian Penal Code, 1860 — Section 120B, 149, 182, 403, 404, 406, 419, 420, 468, 471

Citation : (2022) 04 CAL CK 0040

Hon'ble Judges : Ananda Kumar Mukherjee, J

Bench : Single Bench

Advocate : Soumen Kumar Dutta, Subhadip Chatterjee, Arpita Kundu, Sudip Ghosh, Apurba Kumar Dutta, Bitasak Banerjee

Final Decision : Dismissed

Judgement

Ananda Kumar Mukherjee, J

1. Petitioner has filed this application under section 482 of the Code of Criminal Procedure praying for quashing of the proceedings in connection with G.R. Case No. 526 of 2006, arising out of Tamluk Police Station Case No. 164 of 2006 under sections 419, 420, 403, 406, 182 of the Indian Penal Code in connection with M.P. Case No. 21 of 2006, pending before the learned Chief Judicial Magistrate, Purba Midnapur at Tamluk.

2. Sadhana Das (Opposite Party No. 2) lodged a complaint before the learned Chief Judicial Magistrate, Purba Midnapur praying for directing the police to register the same as FIR under section 156(3) of Cr. P.C. It has been alleged in her petition that Purnima Bhowmik, her unmarried sister who was working in the leprosy department under District Health Department. Expired on 08.07.2001 and claimed herself to be the legal heir of her sister. The de facto complainant prayed before the Health Department that she is the nominee of her deceased sister and that she came to know that one Kajal Bag the present petitioner on

producing false documents claimed himself to be the husband of Purnima Bhowmik and withdrew Rs. 2,53,394/- as Death benefits of Purnima Bhowmik. It has been alleged in the written complaint that Kajal Bag was an unmarried person. He never married Purnima Bhowmik and did not reside with her as husband and wife has withdrawn the service dues of her deceased sister. The matter was informed to the office of her deceased sister but there was no response from them. On the basis of the complaint lodged by Opposite Party No. 2 through court, Tamluk Police Station Case No. 164 of 2006 was registered.

3. Initially final report was submitted on 29.09.2006. On 07.11.2009 Opposite Party No. 2 prayed for further investigation by C.I.D. On 22.11.2006 learned Magistrate directed further investigation. On 05.09.2007 police again submitted final report on 24.08.2007. Thereafter, on 06.01.2009 a petition was filed by Opposite Party No. 2 for further investigation. On 04.02.2010 police submitted charge sheet bearing no. 36 dated 02.02.2010 under sections 419, 420, 468, 471 and 182 of the Indian Penal Code against the accused petitioner. This gave rise G.R. Case No. 526 of 2006.

4. It is claimed by the petitioner in his application that he married Purnima Bhowmik on 13.12.2000 and thereafter, he resided with her as husband and wife in the rented house of Chandi Charan Das at Tamluk. A certificate was issued by the Chairman, Tamluk Municipality dated 30.07.2001 that they were residing together as husband and wife. Further case of the petitioner is that Purnima was seriously ill and was taken to Vallore hospital for her medical treatment. Railway tickets, admission records, discharge certificates would go to establish that she was married with the petitioner. Furthermore, Purnima Bhowmik executed a Will in favour of the petitioner during her life time on 03.04.2001. After the death of Purnima on 08.07.2001 in a relative's house of Opposite Party No. 2 under Purosottampur Gram Panchayat, her dead body was cremated under the said Panchayat and both the petitioner and Opposite Party No. 2 prayed for the death certificate. After hearing both sides, the Pradhan issued a death certificate of Purnima Bhowmik which has been produced as annexure 'K'. The petitioner filed a Will Probate Case before the court of Civil Judge (Junior Division 1st Court), Tamluk on 01.08.2001 bearing J. Misc Case No. 29 of 2001 and the same is pending before the court for adjudication.

5. Admittedly, Opposite Party No. 2 is the sister of the deceased and she manage to obtain a Death Registration Certificate from the Gram Panchayat of Podumkhana, P.S. Nanda Kumar and posed as the only legal heir of her deceased sister. In such manner she has withdrawing the money of her deceased sister kept at bank and post office.

6. The petitioner filed a criminal case against Opposite Party No. 2 and her associates being, Panskura Police Station Case No. 92 of 2002 dated 17.08.2002 and the case was registered as 5 C of 2003 under sections 406, 420, 120B, 404 by 149 of the Indian Penal Code but the case was quashed by this Hon'ble Court.

7. The petitioner in course of time filed an application before West Bengal Administrative Tribunal praying for releasing the death benefits due to his deceased wife who was a government employee. The application was registered as OA 645 of 2002. On 12.07.2002 the Tribunal was pleased to dispose of the case in favour of the petitioner. On the basis the order passed by the Tribunal petitioner received Rs. 2,60,779/- in four phases in the year 2003. The opposite party no. 2 filed an application before the District Magistrate for issuing a legal heirship certificate. On 10.07.2007 the District Magistrate issued legal heir certificate in favour of the Opposite Party No. 2 without hearing the petitioner. Against the said order the petitioner file a Writ Petition bearing no. 3568 (W) of 2008 before this court on 27.02.2008, wherein learned Hon'ble Single Bench of this court disposed of the application and directed the District Magistrate to conclude the proceeding upon hearing all the concern parties.

8. The District Magistrate thereafter passed an order, against which the petitioner preferred another Writ Petition bearing no. 28537 (W) of 2008 before this court. Hon'ble Court on hearing the Writ Petition, stayed the order of District Magistrate and directed the petitioner to deposit the entire amount received by him from the Chief Medical Officer of Health in a fixed deposit account. The said Writ Petition is still pending the petitioner thereafter, deposited the entire money amounting to Rs. 2,61,000/-.

9. The petitioner also filed an application before learned Civil Judge, Tamluk for an injunction against the order passed by the District Magistrate and the same has been allowed. The copy of the order has been filed as annexure 'P' while those proceedings were pending before different courts, a charge sheet has been submitted against the petitioner without proper investigation.

10. The petitioner asserting his right as legal heir of Purnima Bhowmik filed a suit bearing OS no. 91 of 2008 before the court of Learned Civil Judge, Junior Division, at Tamluk, praying for a declaration and injunction against the brothers and sisters of deceased Purnima Bhowmik. In that suit the petitioner prayed for a declaration that he is the legally married husband and only legal heir of Purnima Bhowmik (Bag) since deceased and defendant no.1 to 5 are not the legal heir of Purnima Bhowmik.

11. Being aggrieved and dissatisfied with the proceedings in G.R. Case No. 526 of 2006, the petitioner has preferred his revisional application, praying for quashing the proceedings in G.R. Case No. 526 of 2006, arising out of Tamluk Police Station Case No. 164 of 2006 under section 419, 420, 403, 406, 182 of the Indian Penal Code, on the grounds inter alia, that police submitted charge sheet against the petitioner without proper investigation and continuation of the proceedings before learned Magistrate would be an abuse of the process of court. It is also contended that the charge sheet filed by in the case is defective and proceeding on the basis of such faulty investigation is bad in law. The petitioner urged that final reports were submitted in this case on two earlier occasions but by influencing the investigating agency the present charge sheet has been

submitted. Further case of the petitioner is that delay in filing the complaint has not been considered and the same has not been explained by the complainant. According to the petitioner the materials in the charge sheet do not disclose any offence against the accused person as such the criminal case against the petitioner is liable to be quashed at the threshold.

12. At the time of hearing the petitioner filed a supplementary affidavit enclosing Xerox copy of Death certificate of Purnima Bhowmik dated 31.07.2001, certificate issued by chairman-in-council from the office of Tamluk Municipality, a certificate issued by Pradhan Amalhanda Gram Panchayat, Sabhapati, Panskura-II Paschim Samiti, Xerox copy of medical documents of Purnima Bhowmik issued from Christian Medical College and Hospital voucher. A copy of order passed by Additional District Magistrate (Development) Purba Midnapur dated 31.10.2008 in compliance with order dated 27.02.2008 passed by Hon'ble Justice Dipankar Dutta (as his Lordship then was) in Writ Petition No. 3568 (W) of 2008 and a copy of plaint in OS No. 91 of 2008.

13. Learned advocate for the petitioner argued that the petitioner is the legally married husband of deceased Purnima and their marriage was solemnized on 13.12.2000. It is further submitted that the petitioner lived with Purnima Bhowmik as husband and wife in the rented house of Chandi Charan Das at Tamluk. The petitioner also relied upon several certificate issued by Amalhanda Gram Panchayat, member and chairman in council of Tamluk Municipality as well as Sabhapati, Panskura-II Panchayat Samiti where Purnima Bhowmik has been certified to be the wife of Kajal Chandra Bag.

14. It is submitted on behalf of the petitioner that after the death of Purnima Bhowmik on 08.07.2001, the petitioner approached the State Administrative Tribunal and filed an application being OA No. 645 of 2002, praying for necessary direction to the CMOH- Midnapur (East) to release the death benefits admissible under the rules to the applicant Kajal Chandra Bag. On the basis of such order of the Tribunal the Chief Medical Officer disbursed Rs. 2,61,000/- in favour of the petitioner in four phases. After lapse of a long time, on 18.04.2006 Sadhana Das the sister of Purnima Bhowmik lodged a complaint before Tamluk Court on the basis of which police registered a case against Kajal Chandra Bag and submitted charge sheet in the year 2010.

15. Learned advocate for the petitioner vehemently argued that the complaint has been lodged by the sister of the deceased after a long period without explaining the delay and on the basis of such complaint no proceeding should be initiated and continued against the petitioner.

16. Learned advocate argued that the petitioner has filed a Civil suit bearing OS No. 91 of 2008, seeking an injunction against the brothers and the sisters of the deceased so that they may not claim themselves to be the legal heir of his deceased wife. It is contended that the dispute involved in this matter is relating to the question of legal heirship, in respect of the estate of the deceased and any

criminal proceeding continued over this dispute would be an abuse of the process of court. In support of his argument learned advocate for the petitioner relied upon a decision in the case of Kapil Agarwal and others Vs. Sanjoy Sharma and others, where the Hon'ble Supreme Court in Criminal Appeal No. 142 of 2021 held that "inherent jurisdiction under section 482 Cr. P.C and/or under article 226 of the constitution is designed to achieve salutary purpose that criminal proceeding ought not to be permitted to degenerate into weapon of harassment. When the court is satisfied that criminal proceeding amounts to an abuse of process of law or that it amounts to bring pressure against accused in exercise of inherent powers, such proceeding can be quashed."

17. It is further submitted by learned advocate for the petitioner that after the death of Purnima Bhowmik a death certificate was issued by the Sub-register, Birth and Death, Purusottampur G.P Office on 31.07.2001 where from it would appear that his name figures as the husband of the deceased.

18. As regards the alleged receipt and the death benefit of Purnima Bhowmik, it is submitted that as per direction of the Hon'ble Court in Writ Petition No. 28537 (W) of 2008 the petitioner has deposited the entire amount of Rs. 2,61,000/- before the cashier, High Court Appellate Side, Calcutta and to that effect he has filed a Xerox copy of chalan.

19. On the basis of the above facts and circumstances learned advocate for the petitioner prayed for quashing of the criminal proceeding pending against the petitioner.

20. Learned advocate for the State in reply argued that Purnima Bhowmik was never married. She was employed as Health Assistant in the leprosy department at Tamluk MLCU, Purba Midnapur. Her service record would indicate that opposite party no.2, the sister of the petitioner, is her nominee in the service records. Purnima Bhowmik died as a spinster and the Death Registration Certificate collected in course of investigation would clearly indicate that she died at Podumkhana. Her father's name has been mentioned in the death certificate as late Indu Bhusan Bhowmik but the name of the petitioner does not appear as her husband. It is contended that the petitioner has fraudulently impersonated before different authorities that he is the husband of the deceased and has withdrawn the death benefits of Purnima Bhowmik and cheated the actual legal heirs and the employer. It is argued that from the very inception the petitioner induced various office and employing authority of Purnima to pay him that death benefits of Purnima Bhowmik on the basis of forged documents and thereby has also cheated Opposite Party No.2, the nominee of the deceased.

21. Learned advocate for the State/Opposite Party No.1 drew my attention to various contents in the Case Diary where Bela Maity and Rekha Bag, the two sisters of the petitioner stated that their brother lived in the same house with them but he had never married any person by the name of Purnima Bhowmik. The two sisters of the petitioner in their statement under Section 161 of Cr. P.C

stated that the other brother Pulin Bag is a supporter of a political party of which Kajol Bag is also an active supporter and he has claimed himself to be the husband of one Purnima Bag in order to receive her death benefits.

22. Learned advocate for the state contended that there is sufficient materials in the Case Diary to substantiate the allegation against the petitioner and there is no reason for considering the subject matter of this case to be a civil dispute. It is contended that the petitioner by adopting fraudulent means has withdrawn the death benefits of Purnima Bag from her employer and in addition to that he has also received the family pension dues of Purnima Bag upto March 2012. In violation of the spirit of the order of Hon'ble Court in writ petition no.28537(W) of 2008, where the petitioner was directed to deposit the entire amount received by him from the Chief Medical Officer of Health, Purba Midnapur, or otherwise as heirs of the said deceased in a fixed deposit account with any nationalized bank and make over a photostat copy of the receipt thereof within the period of fortnight from date.

23. It is urged that the petition praying for quashing of the criminal proceeding is devoid of merit and the same is liable to be dismissed.

24. I have considered the application filed by the petitioner and the documents relied upon him. Heard learned advocates for the parties. Considered the materials in the Case Diary.

25. Admittedly, the petitioner withdrew the death benefits of one Purnima Bhowmik who worked as a Health Assistant at MLCU, Tamluk in the District of Purba Midnapur and died in harness on 08.07.2001. The present petitioner claimed himself to be the husband of the deceased and made different representations before the West Bengal State Administrative Tribunal, CMOH, Purba Midnapur(East) and also before District Magistrate Purba Midnapur for issuing a legal heirship certificate in his favour.

26. When the matter came to the knowledge of opposite party 2, one of the sister of the deceased who figured as a nominee in the service record of the deceased, lodged a complaint on the basis of which Tamluk PS Case No. 164 of 2006 was registered. After investigation police submitted Charge Sheet against accused person under Seciton 419/420/403/406 and 182 of IPC. In the charge sheet it has been stated that Kajal Chandra Bag fraudulently identified himself as husband of Purnima Bhowmik and misappropriated an amount of Rs. 6,91,473/- after producing false documents. It is admitted by the petitioner that he filed an application before the office of the District Magistrate Purba Midnapur, claiming himself to be the husband of Purnima Bhowmik. As there was delay in disposing the application the petitioner approached the Hon'ble Court and filed Writ Petition no. 3568(W) of 2008 which was disposed by the Hon'ble Justice Dipankar Dutta (as his Lordship then was). On disposing the application Hon'ble Court directed the office of the District Magistrate to conclude the proceeding upon hearing all concern parties within two weeks from the date of communication of the order.

In compliance with Hon'ble Court's order Additional District Magistrate (Development) Purba Midnapur consider such representation from the parties and conclude that Kajal Bag, the applicant did not marry Purnima Bhowmik. As such he cannot be the legal heir of Purnima Bhowmik as deceased. It was further held that the Legal heir Certificate of deceased Purnima which was issued vide memo no.700/RM 10.07.2007 of the said office is proper, valid and justified. Therefore, prima facie it appears that the petitioner could not produce documents or any joint photograph with the deceased in support of his purported marriage.

27. In absence of any marriage of the petitioner with Purnima Bhowmik, the representation made by the petitioner appears to be fraudulent representation with an object to cheat the public office in disbursing the death benefit and other dues like family pension to the petitioner, whereas the persons entitled to such benefits are deprived from receiving the same. On a scrutiny of the material in Case Diary it appears that even the two sisters of the petitioner are absolutely unaware about any marriage taking place between their Kajal Bag with the deceased Purnima Bhowmik.

28. Two death certificates have been placed before this court. One to which disclose that the place of death of Purnima was Padamkhana and her father's name, Late Indu Bhusan Bhowmik has been recorded. The petitioner on the other hand has produced another death certificate where his name appears as the husband and the place of death of the deceased is recorded as Gourangapur. The death certificate produced by the petitioner does not find any support from any other document.

29. Petitioner could not produce any material to prima facie indicate that he was married to the deceased. The service records of the deceased does not bear the name of the petitioner. After thorough enquiry the Additional District Magistrate (Development) Midnapur has found that Kajal Bag was not married to Purnima Bhowmik. In a subsequent writ petition bearing WP no.28537 (W) of 2008 the Hon'ble Single Bench of this Court by order dated 09.07.2009 observed that the order of Additional District Magistrate, Purba Midnapur, prima facie, appears to be without jurisdiction and will remain stayed. The petitioner was also directed to deposit the entire amount received by him from the Chief Medical Officer of Health, Purba Midnapur or otherwise as heir of the deceased in a fixed deposit account with any nationalized bank.

30. Therefore, it appears that the marital relation of the petitioner with deceased Purnima Bhowmik has not established. Petitioner in his quest to consolidate his claim as the husband, has filed O.S. No.91 of 2008 before Tamluk Court seeking a declaration from the court that he is the legally married husband of the deceased Purnima Bhowmik. On assessing materials on record as discussed herein it appears that a strong prima facie case emerges against the petitioner to indicate that without being the husband of the deceased employee in a public service, he has made representations before different authorities and also

received the death benefits and also allegedly misappropriated money on other accounts in the garb of being legal heir of deceased. The decision relied on behalf of the petitioner that it is a civil dispute and should not continue is not applicable to the facts of this case. Therefore, I am of the considered view that the uncontroverted allegations made in the FIR/complaint and other materials evidence collected does disclose an offence against the petitioner. The case involves matters relating to facts which are in the realm of evidence and cannot be decided at the state of considering an application under Section 482 of Cr.P.C. Accordingly, I hold that there is no merits in the application filed by the petitioner. Nor is it a dispute of a civil nature as claimed by him. Therefore, the revisional application filed by the petitioner is dismissed on contest. Interim order if any stands vacated. All connected applications are disposed of. Copy of the Case Diary filed by learned Advocate for state/opposite party no. 1 be returned. Let a copy of this judgement be sent to Learned Chief Judicial Magistrate, Purba Midnapur, Tamluk for information. Learned Magistrate is directed to expedite trial of this case and dispose the same preferably within a period of six months. In so doing learned Magistrate shall not be influenced by the observations made herein and decide the case on evidence.

31. Urgent Photostat certified copy of this order may be supplied to the parties expeditiously if applied for, maintaining all formalities.